

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) 250338-1470			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed name _____	Application Number  09/866,259	Filed  May 25, 2001			
	First Named Inventor  James Ching-Shau Yik				
	Art Unit  2434	Examiner  Tolentino, Roderick			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p>  <p>This request is being filed with a notice of appeal.</p>  <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>  <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding: 5px;"><input type="checkbox"/> applicant/inventor.  <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  <input checked="" type="checkbox"/> attorney or agent of record. Registration number _____  <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="width: 50%; vertical-align: top; padding: 5px;"><div style="border-bottom: 1px solid black; margin-bottom: 5px;">/afb/</div><div style="text-align: right; margin-bottom: 5px;">Signature</div><div style="border-bottom: 1px solid black; margin-bottom: 5px;">Anthony F. Bonner</div><div style="text-align: right; margin-bottom: 5px;">Typed or printed name</div><div style="border-bottom: 1px solid black; margin-bottom: 5px;">770-933-9500</div><div style="text-align: right; margin-bottom: 5px;">Telephone number</div><div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div><div style="text-align: right; margin-bottom: 5px;">Date</div></td></tr></table> <p style="font-size: small; margin-top: 10px;">NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.  <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  <input checked="" type="checkbox"/> attorney or agent of record. Registration number _____  <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<div style="border-bottom: 1px solid black; margin-bottom: 5px;">/afb/</div> <div style="text-align: right; margin-bottom: 5px;">Signature</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">Anthony F. Bonner</div> <div style="text-align: right; margin-bottom: 5px;">Typed or printed name</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">770-933-9500</div> <div style="text-align: right; margin-bottom: 5px;">Telephone number</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="text-align: right; margin-bottom: 5px;">Date</div>
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<input type="checkbox"/> *Total of _____ forms are submitted.					

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The information provided by you in this form will be subject to the following routine uses:

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6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application of:

Confirmation Number: 5515

Yik, James Ching-Shau

Group Art Unit: 2134

Serial No.: 09/866,259

Examiner: Tolentino, Roderick

Filed: May 25, 2001

Docket No.: 250338-1470

For: Data Network Mode Having Enhanced Security Features

**REMARKS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE**

Mail Stop Appeal Brief  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Appellant submits the following remarks in support of a Request for a Pre-Appeal Brief Conference.

### **REMARKS**

Appellant submits that the following clear legal deficiency exists in the rejection. Namely, the previous Office Action equates “a plurality of switching entry protection flags, corresponding to the plurality of switching entries, each of the plurality of switching entry protection flags configured with a predetermined value that determines whether each of the switching entries is protected from update” with “a flag that enables a port.” This deficiency in the Final Office Action amounts to clear error. Accordingly, Appellant respectfully requests withdrawal of this rejection and allowance of the present application.

#### **Claim 1 is Allowable Over Lee**

The Office Action indicates that claim 1 stands rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent Publication Number 2002/0156888 (“Lee”). Appellant respectfully traverses this rejection on the grounds that Lee does not disclose, teach, or suggest all of the claimed elements. More specifically, claim 1 recites:

A secure data switching node comprising:

- a. a plurality of communications ports;
- b. a switching database having a plurality of switching entries, each one of the plurality of switching entries specifying an association between one or more data network node identifiers and one or more respective communications ports;
- c. ***a plurality of switching entry protection flags, corresponding to the plurality of switching entries, each of the plurality of switching entry protection flags configured with a predetermined value that determines whether each of the switching entries is protected from update***; and
- d. a controller executing a secure switching database update process, for at least one of the switching entries, wherein executing a secure switching database update process includes ***determining, from at least one of the switching entry protection flags, whether the at least one of the switching entries is protected from update*** and receiving a modification instruction including a change of at least one of the respective communications ports for at least one of the data network node identifiers, whereby an attempt by a hostile data network node to effect a modification of the at least one communication port of a protected switching entry is prevented when the protection flag is

set, enabling the data switching node to operate securely concurrently in friendly and hostile data networking environments.

**(Emphasis added).**

Appellant respectfully submits that claim 1 is allowable for at least the reason that *Lee* fails to disclose, teach, or suggest a “secure data switching node comprising... **a plurality of switching entry protection flags, corresponding to the plurality of switching entries, each of the plurality of switching entry protection flags configured with a predetermined value that determines whether each of the switching entries is protected from update**... [and] **determining, from at least one of the switching entry protection flags, whether the at least one of the switching entries is protected from update**” as recited in claim 1. First, *Lee* was filed December 21, 2001, which is after the May 25, 2001 filing date of the present application and is thus not prior art. Second, if the Office Action is attempting to rely on the April 23, 2001 filing date of the *Lee Provisional* (60/285,936), Appellant respectfully submits that the *Lee Provisional* fails to provide support for at least the highlighted features of claim 1. More specifically, the *Lee Provisional* discloses “[e]ach port has a special flag indicating whether the port is 'enabled' (versus disabled) for data transfer” (page 9, last paragraph). As illustrated in this passage, the *Lee Provisional* discloses a flag that indicates whether a port is enabled for data transfer. This is completely different than “**switching entry protection flags configured with a predetermined value that determines whether each of the switching entries is protected from update**” as recited in claim 1. Additionally, the *Lee Provisional* discloses “there exists a flag for each port about the validity of the Port Neighbor Information data” (page 13, paragraph “a”). As illustrated in this passage, the *Lee Provisional* discloses a flag regarding validity of information. This is completely different than “**switching entry protection flags configured with a predetermined value that determines whether each of the switching entries is protected from update**” as recited in claim 1. While the Final Office Action argues:

[The *Lee Provisional*] teaches a flag enabling a port. The port can either be enabled or disabled and this is indicated by a flag, this flag similar to the flag of the claim language in Claim 1 where switching entry protection flags configured with a predetermined value that determines whether each of the switching entries is protected from update. The argument that the Provisional fails to teach an update is moot since updating information via a port is just intended use. Intended use is not patentable material. The port as taught in the provisional shows how the port can transfer data or not based on the flag indicator of the port. One of ordinary skill in the art would see how this reads on the claim language in Claim 1 of "protection flags configured with a predetermined value that determines whether each of the switching entries is protected from update.

(OA page 3, line 15).

Appellant respectfully disagrees. More specifically, the *Lee Provisional* does not disclose the exact same flags that could be used in a manner consistent with claim 1. To the contrary, claim 1 clearly recites "**switching entry protection flags configured with a predetermined value that determines whether each of the switching entries is protected from update.**" The switching entry protection flags include different information (e.g., "a predetermined value...") than a flag that simply enables or disables a port, as disclosed in the *Lee Provisional*. Consequently, this is not just "intended use" as argued in the Final Office Action. For at least the reason that the *Lee Provisional* fails to support a rejection under 35 U.S.C. §102, the rejection is deficient and claim 1 is allowable.

### **Claims 2 – 7, 10, and 13**

Additionally, claim 3 – 7, 10, and 13 are allowable for at least the reasons set forth above.

### **Claims 8 – 9, 11 – 12, and 14 – 20**

Further, claims 2, 8 – 9, 11 – 12, and 14 – 20 are allowable for at least the reason that these claims depend from claims 1, 3, 4, 5, 7, and 10, respectively.

**CONCLUSION**

For at least the reasons set forth above, favorable reconsideration and allowance, or the re-opening of prosecution on the merits of the present application and all pending claims are hereby courteously requested.

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER  
& RISLEY, L.L.P.**

/afb/

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